

APR 10 2020

Clerk, U S District Court
District Of Montana
Billings

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

UNITED STATES OF AMERICA, Plaintiff, vs. SMITH & WESSON 36 REVOLVER, Defendant.	CV 20-4-BLG-SPW-TJC FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT, AND ORDER OF FORFEITURE
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This matter is brought before this Court by Plaintiff, United States, by and through its attorney, Victoria L. Francis, Assistant U.S. Attorney for the District of Montana. The United States has filed a Motion for Entry of Judgment and Order of Forfeiture pursuant to Fed. R. Civ. P. 55(b)(2). Upon considering the pleadings filed herein, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On January 24, 2020, the United States instituted a judicial forfeiture action by filing in this cause a Verified Complaint *in Rem* against the defendant firearm, one Smith & Wesson 36 Revolver, CAL: 38, SN: 786049, involved in a violation of 18 U.S.C. § 922(g)(1) and (3), and subject to forfeiture pursuant to 18 U.S.C. § 924(d):

2. On January 30, 2020, Agent Cory Kambak executed the Warrant of

Arrest *in Rem* (Doc. 4) that was issued by this Court on January 28, 2020, and arrested the defendant property. (Doc. 6, Declaration of Arrest).

3. On January 24, 2020, the United States provided notice of this civil asset forfeiture action, by mailing the Notice of Complaint for Forfeiture *In Rem* (Doc. 2) and Verified Complaint *In Rem* (Doc. 1) to Lisa Emmett Walter and Anthony Walter, via first class U.S. mail and Certified mail, to the address provided in Ms. Walter's administrative claim as well as the addresses provided by law enforcement. (*See* Doc. 10, Exhibits 1-4).

4. Notice of this forfeiture action was also provided to known and unknown potential claimants by publishing on the government's asset forfeiture website the Notice of Forfeiture Action for 30 consecutive days, beginning on January 25, 2020, and ending on February 23, 2020. The "Notice of Forfeiture Action" provides in pertinent part as follows:

Any person claiming a legal interest in the Defendant Property must file a verified Claim with the court within 60 days from the first day of publication (January 25, 2020) of this Notice on this official government internet web site and an Answer to the complaint or motion under Rule 12 of the Federal Rules of Civil Procedure within 21 days thereafter. . . .

(Dec. of Publication, Doc. 5, Att. 1).

5. Upon considering the United States' Motion for Entry of Default of Known Potential Claimants, Lisa Emmett Walter and Anthony Walter, (Doc. 9)

and Declaration filed in support of the motion (Doc. 10), the Clerk of District Court entered the default of Lisa Emmett Walter and Anthony Walter, on March 27, 2020, for failure to timely file a verified claim and/or to answer or otherwise defend as required by the Supplemental Rules. (Doc. 12).

6. Upon considering the United States' Motion for Entry of Default of Unknown Potential Claimants, (Doc. 7) and Declaration filed in support of the motion (Doc. 8), the Clerk of District Court entered the default of unknown potential claimants, on March 27, 2020, for failure to timely file a verified claim and/or to answer or otherwise defend as required by the Supplemental Rules. (Doc. 11).

7. The factual allegations set forth in paragraphs 1 through 20, of the Verified Complaint for Forfeiture *In Rem* are verified by Cory Kambak, Special Agent for the Alcohol, Tobacco, Firearms and Explosives. (Doc. 1)

Based upon the foregoing Findings of Fact, the Court makes the following conclusions of law.

CONCLUSIONS OF LAW

8. The Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1345 and 1355. The United States has filed a Verified Complaint for Forfeiture *in Rem* to forfeit the defendant property consisting of firearms, pursuant to 18 U.S.C. § 924(d)(1) and (3).

9. Pursuant to 28 U.S.C. §§ 1335(b)(1)(A) and 1395(b) or (c), venue is proper in this district because this is a civil proceeding to forfeit United States property found in this district, and the acts or omissions complained of occurred in this district.

10. Civil forfeitures are governed by the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions of the Federal Rules of Civil Procedure. *United States v. 2659 Roundhill Drive*, 283 F.3d 1146, 1149 n.2 (9th Cir. 2002).

11. The Verified Complaint for Forfeiture *in Rem* sets forth detailed facts to support a reasonable belief that the United States will be able to meet its burden of proof at trial as required by Supplemental Rule G(2)(f), to support probable cause, and to provide proof by a preponderance of the evidence to seize and arrest the defendant property described in the verified complaint. The facts contained in the verified complaint support the institution of these forfeiture proceedings for a knowing and willful violation of 18 U.S.C. § 922(g), and subject to forfeiture under 18 U.S.C. § 924(d).

12. Notice of this action was properly provided to known potential claimants, Lisa Emmett Walter and Anthony Walter, by providing “actual notice” by mailing the Verified Complaint *In Rem*, in accordance with Supplemental Rule G(4)(b)(v).

13. Notice by publication was also provided to known and unknown potential claimants in accordance with Supplemental Rule (G)(4)(a)(iv)(C).

14. In accordance with Fed. R. Civ. P. 55(a) and Supplemental Rules A(2) and G(5), the Clerk of District Court properly entered the default of Lisa Emmett Walter and Anthony Walter, and any unknown claimants. (Docs. 9 and 10).

15. The United States is entitled to default judgment against the defendant firearms and ammunition and against any claims to the defendant property under Fed. R. Civ. P. 55(b)(2). The United States is further entitled to an order of forfeiture of the defendant firearms.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The United States is granted a default judgment against the defendant firearms and ammunition, which are more particularly described as one Smith & Wesson 36 Revolver, CAL: 38, SN: 786049.

2. The defendant firearms are hereby forfeited to the United States and shall be disposed of in accordance with the law.

DATED this 10th day of April, 2020.



SUSAN P. WATTERS
United States District Judge